

**IN THE MATTER OF THE CLAIM  
OF ALCYIA HYRE,  
CLAIMANT  
AGAINST THE MARYLAND HOME  
IMPROVEMENT GUARANTY FUND  
FOR THE ALLEGED ACTS OR  
OMISSIONS OF MARK HUBER,  
T/A MASONRY AND REMODELING  
KONTRACTORS, LLC,  
RESPONDENT**

**\* BEFORE BRIAN ZLOTNICK,  
\* ADMINISTRATIVE LAW JUDGE  
\* THE MARYLAND OFFICE  
\* OF ADMINISTRATIVE HEARINGS  
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\* OAH No.: LABOR-HIC-02-19-33550  
\* MHIC No.: 19 (90) 443**

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**PROPOSED DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
PROPOSED FINDINGS OF FACT  
DISCUSSION  
PROPOSED CONCLUSIONS OF LAW  
RECOMMENDED ORDER

**STATEMENT OF THE CASE**

On April 8, 2019, Alycia Hyre (Claimant) filed a claim (Claim) with the Maryland Home Improvement Commission (MHIC) Guaranty Fund (Fund) for reimbursement of \$5,975.00 in actual losses allegedly suffered as a result of a home improvement contract with Mark Huber, trading as Masonry and Remodeling Kontrators, LLC (Respondent). Md. Code Ann., Bus. Reg. §§ 8-401 through 8-411 (2015). On October 15, 2019, the MHIC forwarded the matter to the Office of Administrative Hearings (OAH) for a hearing.

I held a hearing on July 17, 2020, at the OAH in Hunt Valley, Maryland.<sup>1</sup> Bus. Reg. § 8-407(e). Hope Sachs, Assistant Attorney General, Department of Labor (Department),<sup>2</sup> represented the Fund. The Claimant represented herself. After waiting fifteen minutes for the Respondent or the Respondent's representative to appear, I proceeded with the hearing. Code of Maryland Regulations (COMAR) 28.02.01.23A.<sup>3</sup>

The contested case provisions of the Administrative Procedure Act, the Department's hearing regulations, and the Rules of Procedure of the OAH govern procedure in this case. Md. Code Ann., State Gov't §§ 10-201 through 10-226 (2014 & Supp. 2020); COMAR 09.01.03; COMAR 28.02.01.

### ISSUES

1. Did the Claimant sustain an actual loss compensable by the Fund as a result of the Respondent's acts or omissions?
2. If so, what is the amount of the compensable loss?

### SUMMARY OF THE EVIDENCE

#### Exhibits

I admitted the following exhibits on the Claimant's behalf:

- Cl. Ex. 1 – Home Improvement Claim Form, April 5, 2019 with attached typed statement;
- Cl. Ex. 1A - Contract between Claimant and Respondent, October 23, 2017;
- Cl. Ex. 1B – Estimate from Crockett & Sons Concrete, Inc., April 1, 2019;
- Cl. Ex. 2 - E-mails between the Claimant and the Respondent from November 28, 2017 to May 15, 2018;

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<sup>1</sup> A hearing was originally scheduled for March 20, 2020 at the Bel Air Library but was postponed on March 13, 2020 because of the COVID-19 Pandemic closure of state offices and buildings.

<sup>2</sup> On July 1, 2019, the Maryland Department of Labor, Licensing, and Regulation became the Department of Labor.

<sup>3</sup> Notice of the hearing was mailed to the Respondent at the address of record by regular and certified mail on April 28, 2020, COMAR 09.08.03.03A(2), and not returned as unclaimed/undeliverable. Applicable law permits me to proceed with a hearing in a party's absence if that party fails to attend after receiving proper notice. COMAR 28.02.01.23A. I determined that the Respondent had received proper notice and proceeded to hear the captioned matter.

- Cl. Ex. 2A - Letter from the Claimant to the Respondent, May 23, 2018;
- Cl. Ex. 3 - Photograph of patio steps, taken by the Claimant on November 28, 2017;
- Cl. Ex. 4 - Photograph of patio, taken by the Claimant on November 28, 2017;
- Cl. Ex. 5 - Photograph of patio steps, taken by the Claimant on December 6, 2017;
- Cl. Ex. 6 - Photograph of patio, taken by the Claimant on April 1, 2019;
- Cl. Ex. 7 - Photograph of patio and steps, taken by the Claimant on April 1, 2019;
- Cl. Ex. 8 - Photograph of patio, taken by the Claimant on April 1, 2019;
- Cl. Ex. 9 - Photograph of patio, taken by the Claimant on April 1, 2019;
- Cl. Ex. 10 - Copy of cancelled check from Claimant to Respondent for \$1,880.00, October 22, 2017;
- Cl. Ex. 11 - Copy of cancelled check from Claimant to Respondent for \$3,760.00, November 4, 2017.

I admitted no exhibits on the Respondent's behalf.

I admitted the following exhibits on behalf of the Fund:

- Fund Ex. 1 – Hearing Order, October 8, 2019;
- Fund Ex. 2 – OAH Notice of Hearing, April 28, 2020;
- Fund Ex. 3 – OAH Notice of Hearing, December 16, 2019;
- Fund Ex. 4 – Letter from the MHIC to the Respondent, April 17, 2019, with attached Claimant's Claim Form, April 8, 2019.
- Fund Ex. 5 – Respondent's Licensing Information, July 13, 2020

#### Testimony

The Claimant testified and presented no witnesses. Neither the Fund nor the Respondent presented witnesses.

## PROPOSED FINDINGS OF FACT

I find the following facts by a preponderance of the evidence:

1. At all times relevant to the subject of this hearing, the Respondent was a licensed MHIC home improvement contractor.
2. On October 23, 2017, the Claimant and the Respondent entered into a contract (Contract) in which the Respondent agreed to remove the Claimant's existing deck and install a new concrete patio. (Cl. Ex. 1A).
3. The agreed-upon Contract price was \$5,640.00. (Cl. Ex. 1A).
4. The Respondent completed work on the patio on October 23, 2017. On November 28, 2017 the Claimant informed the Respondent that the patio steps were uneven and that water pooled at the bottom of the steps. On November 29, 2017, the Respondent replied that they would fix this issue. (Testimony of Claimant).
5. On December 6, 2017, the Respondent's team leader, Kenny,<sup>4</sup> fixed the patio steps. Kenny told the Claimant that the form for the patio had collapsed and that the Respondent would have to come back in the spring to fix it. (Testimony of Claimant),
6. On March 26, 2018, the Claimant e-mailed the Respondent inquiring when they would be able to come out and fix the patio. On March 27, 2018, the Respondent replied that they would be happy to come out to fix the patio but that they were a couple of weeks out on their schedule. (Cl. Ex. 2).
7. On April 28, 2018, the Claimant e-mailed the Respondent requesting to schedule a date for the Respondent to tear out the patio, fix the forms and re-pour the patio per Kenny's instructions. On April 29, 2018, the Respondent replied that he was unaware of the need to tear

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<sup>4</sup> Kenny's last name was not provided.

apart the patio. The Respondent indicated that Kenny is no longer employed with the company, but he will reach out to him to discuss the patio. (Cl. Ex. 2).

8. On May 8, 2018, the Claimant e-mailed the Respondent inquiring when he will be coming to the home to inspect the patio. On May 15, 2018, the Claimant e-mailed the Respondent again asking when he would come to her home to inspect the patio.

9. After the Respondent repaired the patio steps in December 2017, they never returned to the Claimant's home to inspect and/or make any repairs to her patio. (Cl. Ex. 2 and Testimony of Claimant).

10. On May 23, 2018, the Claimant sent the Respondent a letter detailing the large cracks in the patio and the pooling of water at the base of the patio steps. The Claimant requested the Respondent to contact her, but they never replied. (Cl. Ex. 2A and Testimony of Claimant).

11. The patio is uneven and graded downhill toward the base of the patio steps resulting in pooling water at the base of the steps. (Cl. Exs. 6, 7, 8, and 9).

12. On April 1, 2019, the Claimant obtained an estimate from Crockett & Sons Concrete, Inc., MHIC #129324 (Crockett), to remove the patio and steps and reinstall a new concrete patio and steps for \$5,975.00. (Cl. Ex. 1B).

### **DISCUSSION**

In this case, the Claimant has the burden of proving the validity of the Claim by a preponderance of the evidence. Md. Code Ann., Bus. Reg. §8-407(e)(1) (2015); Md. Code Ann., State Gov't §10-217 (2014); COMAR 09.08.03.03A(3). "[A] preponderance of the evidence means such evidence which, when considered and compared with the evidence opposed to it, has more convincing force and produces . . . a belief that it is more likely true than not true."

*Coleman v. Anne Arundel Cty. Police Dep't*, 369 Md. 108, 125 n.16 (2002) (quoting *Maryland Pattern Jury Instructions* 1:7 (3d ed. 2000)).

An owner may recover compensation from the Fund “for an actual loss that results from an act or omission by a licensed contractor.” Md. Code Ann., Bus. Reg. § 8-405(a) (2015);<sup>5</sup> *see also* COMAR 09.08.03.03B(2) (“actual losses . . . incurred as a result of misconduct by a licensed contractor”). “[A]ctual loss’ means the costs of restoration, repair, replacement, or completion that arise from an unworkmanlike, inadequate, or incomplete home improvement.” Bus. Reg. § 8-401. For the following reasons, I find that the Claimant has proven eligibility for compensation.

Neither the Respondent nor the Fund presented a case. The Claimant contended that she entered into the Contract with the Respondent on October 23, 2017 to remove an existing deck and install a concrete patio with steps. The Claimant further indicated that she paid the Respondent the full contract price of \$5,640.00 as evidenced by the cancelled checks she submitted into evidence.

The Respondent completed the Contract on October 23, 2017 and later repaired the patio steps in December 2017. The Respondent’s team leader, Kenny, who performed the step repair, alerted the Claimant that the patio’s concrete form had collapsed necessitating a return in the Spring by the Respondent to tear out the patio and re-install it. The Claimant made numerous attempts by e-mail and correspondence to the Respondent in March, April and May of 2018 but the Respondent never returned to the Claimant’s home to inspect the patio and/or make any repairs.

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<sup>5</sup> Unless otherwise noted, all references to the Business Regulation Article herein cite the 2015 Replacement Volume of the Maryland Annotated Code.

The Respondent's poor workmanship and failure to repair the patio prompted the Claimant to obtain an estimate from Crockett to repair and replace the patio installed by the Respondent. The Crockett estimate did not include any work that went beyond the Contract and it totaled \$5,975.00.

There is no dispute the Respondent was a licensed home improvement contractor at the time he entered into the Contract with the Claimant. The only issues concern whether the Claimant met her burden as to whether the Respondent performed in an unworkmanlike manner and whether as a result she sustained a loss compensable by the Fund. For the following reasons, I find the Claimant met her burden.

While the Claimant presented no expert testimony to substantiate her claim the Respondent performed in an unworkmanlike manner, I find her testimony and photographic evidence of the patio reveal that to be the case. The Claimant presented photographs showing pooling of water at the base of the patio steps along with photographs that demonstrated that the patio was graded downhill toward the steps which caused the pooling of water. The Claimant testified that if the patio was graded properly downhill away from the steps and toward the backyard grass, the water issues would not have occurred. The Claimant also credibly testified that Kenny informed her that the form for the patio had collapsed which also caused the pooling of water on the patio. I find this indicates a failure by the Respondent to perform in a workmanlike manner.

Additionally, the Claimant made numerous attempts to have the Respondent return to the job to remedy it, but the Respondent never returned after Kenny fixed the steps in December 2017. I also find that the Claimant established the amount of payments made by her to the Respondent through the cancelled checks she submitted into evidence.

Having found eligibility for compensation, I must determine the amount of the Claimant's actual loss and the amount, if any, that the Claimant is entitled to recover. The Fund may not compensate a claimant for consequential or punitive damages, personal injury, attorney fees, court costs, or interest. Bus. Reg. § 8-405(e)(3); COMAR 09.08.03.03B(1).

In closing, the Fund took the position that \$5,640.00, the amount the Claimant paid the Respondent for the Contract, was the appropriate award. I agree. The Claimant obtained an estimate from Crockett to remedy the Respondent's work which amounted to \$5,975.00, however the Claimant's award is limited to the amount of money she paid to the Respondent. Therefore, even though it would cost \$5,975.00 to have Crockett fix the Contract, the Claimant is only entitled to an award of \$5,640.00, the amount she paid the Respondent. Accordingly, the following formula appropriately measures the Claimant's actual loss:

If the contractor did work according to the contract and the claimant has solicited or is soliciting another contractor to complete the contract, the claimant's actual loss shall be the amounts the claimant has paid to or on behalf of the contractor under the original contract, added to any reasonable amounts the claimant has paid or will be required to pay another contractor to repair poor work done by the original contractor under the original contract and complete the original contract, less the original contract price. If the Commission determines that the original contract price is too unrealistically low or high to provide a proper basis for measuring actual loss, the Commission may adjust its measurement accordingly.

COMAR 09.08.03.03B(3)(c).

The Claimant paid the Respondent \$5,640.00 as the original contract price. Therefore, I find the Claimant suffered an actual loss of \$5,975.00.<sup>6</sup> However, the Business Regulation Article caps a claimant's recovery at \$20,000.00 for acts or omissions of one contractor and provides that a claimant may not recover more than the amount paid to the contractor against whom the claim is filed. Bus. Reg. 8-405(e)(1), (5); COMAR 09.08.03.03B(4), D(2)(a) (emphasis added). In this case, the Claimant's actual loss is more than the amount paid to the

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<sup>6</sup>  $(\$5,640.00 + \$5,975.00) - \$5,640.00 = \$5,975.00$ .

Respondent and less than \$20,000.00. Therefore, the Claimant is entitled to a maximum recovery of \$5,640.00.

**PROPOSED CONCLUSIONS OF LAW**

I conclude that the Claimant has sustained an actual and compensable loss of \$5,640.00 as a result of the Respondent's acts or omissions. Md. Code Ann., Bus. Reg. §§ 8-401, 8-405; COMAR 09.08.03.03B(3)(c). I further conclude that the Claimant is entitled to recover \$5,640.00 from the Fund. *Id.*

**RECOMMENDED ORDER**

I **RECOMMEND** that the Maryland Home Improvement Commission:

**ORDER** that the Maryland Home Improvement Guaranty Fund award the Claimant \$5,640.00; and

**ORDER** that the Respondent is ineligible for a Maryland Home Improvement Commission license until the Respondent reimburses the Guaranty Fund for all monies disbursed under this Order, plus annual interest of ten percent (10%) as set by the Maryland Home Improvement Commission;<sup>7</sup> and

**ORDER** that the records and publications of the Maryland Home Improvement Commission reflect this decision.

October 8, 2020  
Date Decision Issued

BMZ/cj  
#188352

**CONFIDENTIAL**

Brian Zlotnick *az*  
Administrative Law Judge

<sup>7</sup> See Md. Code Ann., Bus. Reg. § 8-410(a)(1)(iii) (2015); COMAR 09.08.01.20.

**PROPOSED ORDER**

***WHEREFORE, this 1<sup>st</sup> day of December, 2020, Panel B of the Maryland Home Improvement Commission approves the Recommended Order of the Administrative Law Judge and unless any parties files with the Commission within twenty (20) days of this date written exceptions and/or a request to present arguments, then this Proposed Order will become final at the end of the twenty (20) day period. By law the parties then have an additional thirty (30) day period during which they may file an appeal to Circuit Court.***

***Joseph Tunney***

***Joseph Tunney***

***Chairman***

***Panel B***

***MARYLAND HOME IMPROVEMENT  
COMMISSION***